

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MICHAEL T. PINES,

Plaintiff,

vs.

ZIONS FIRST NATIONAL BANK;
FENDERS RECOVERY SERVICE,

Defendants.

CASE NO. 09cv2786 JM(BLM)

ORDER DENYING MOTION TO
SET ASIDE ENTRY OF DEFAULT
AS MOOT; DENYING MOTION
FOR ENTRY OF DEFAULT
JUDGMENT AS MOOT; DENYING
REQUEST FOR ATTORNEY'S FEES

Defendant CENTN Corp, d/b/a Fenders Recovery Service and erroneously sued as Fenders Recovery Service, moves to set aside Plaintiff Michael Pines' request for entry of default judgment by court filed on January 14, 2010. Plaintiff moves for entry of default judgment against CENTN. Michael Pines does not object to setting aside default "as long as attorney's fees and costs incurred are paid." (Oppo at p. 2:8-9). Pursuant to Local Rule 7.1(d)(1), the court finds this matter appropriate for decision without oral argument.

As a threshold matter, the court notes the unique procedural posture of the present motion. CENTN moves to set aside a default that has never been entered; and Plaintiff moves for entry of default judgment without having moved for entry of default. See Eitel v. McCool, 782 F.2d 1470, 1471 (9th Cir. 1986). The closest that Plaintiff comes to moving for entry of default is his motion for default judgment. (Docket No. 7). However, notably absent from Plaintiff's motion for default judgment is a request for entry of default.

1 As default has neither been obtained nor requested, the court denies both pending motions as
2 moot. The court also concludes that there is no basis for an award of attorney's fees.

3 In sum, the motion to set aside default is denied as moot, (Docket No. 12), the motion for entry
4 of default judgment is denied as moot, (Docket No. 7), and the court denies Plaintiff's request for
5 attorney's fees. CENTN is instructed to file a response to the complaint within 10 days of entry of
6 this order.

7 **IT IS SO ORDERED.**

8 DATED: March 4, 2010



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10 Hon. Jeffrey T. Miller
11 United States District Judge
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cc: All parties